

1 KENNER LAW FIRM, P.C.
2 David E. Kenner, SBN 41425
3 Brett A. Greenfield, SBN 217343
4 16000 Ventura Boulevard, PH 1208
5 Encino, CA 91364
6 818 995 1195
7 818 475 5369 - fax

5 WADE, KELLY & SULLIVAN
6 733 W. 4th Avenue, Suite 200
7 Anchorage, Alaska 99501
8 (907) 561-7743
9 (907) 562-8977 - fax

8 Attorney for Defendant Josef F. Boehm

9 IN THE UNITED STATES DISTRICT COURT

10 DISTRICT OF ALASKA

11

12 Sally C. Purser,)
13 Plaintiff,) MOTION TO COMPEL PSYCHIATRIC
14 v.) EXAMINATION OF PLAINTIFF PURSUANT
15 Josef F. Boehm, Allen K.) TO FEDERAL RULES OF CIVIL
16 Bolling, and Bambi Tyree,) PROCEDURE, RULE 35
17 Defendants.)
18 _____)
19)

CASE NO.: A05-0085 (JKS)

20 I. INTRODUCTION

21 Plaintiff seeks compensation for damages she alleges were caused
22 by Defendant Boehm and others. She has placed her claimed
23 psychological and physiological damages at the fore front of this
24 litigation and demands compensation in excess of Five million dollars
25 for her perceived problems.

26 Defendant Boehm has requested on several occasions that Plaintiff
27 submit to a psychological evaluation with his expert Dr. Mark Mills.
28

1 Plaintiff through her counsel Darryl Jones has repeatedly denied the
 2 request in the face of his clients numerous emotional and
 3 psychological damage claims. Plaintiff has placed her psychological
 4 and physiological well being at issue, therefore, Defendant Boehm must
 5 be allowed to conduct the requested discovery.

6 **II. FEDERAL RULES OF CIVIL PROCEDURE, RULE 35 SET FORTH THE REASONING**
FOR A COURT ORDERED PSYCHOLOGICAL EVALUATION

8 Federal Rules of Civil Procedure, Rule 35 sets forth a litigants
 9 right to demand a Physical and Mental Examinations of Plaintiff as
 10 follows:

11 (a) Order for Examination. When the mental or
 12 physical condition (including the blood group) of
 13 a party or of a person in the custody or under
 14 the legal control of a party, is in controversy,
 15 the court in which the action is pending may
 16 order the party to submit to a physical or mental
 17 examination by a suitably licensed or certified
 18 examiner or to produce for examination the person
 in the party's custody or legal control. The
 order may be made only on motion for good cause
 shown and upon notice to the person to be
 examined and to all parties and shall specify the
 time, place, manner, conditions, and scope of the
 examination and the person or persons by whom it
 is to be made.

19 **III. PLAINTIFF'S AMENDED COMPLAINT HAS PLACED HER MENTAL AND PHYSICAL**
CONDITION IN CONTROVERSY

21 Plaintiff's Amended Complaint for damages *incorporated herein as*
 22 *Exhibit "A"* sets forth allegations requiring discovery of Purser's
 claims. Purser alleges that Boehm was:

23 1. responsible for Purser's "addicted to drugs" paragraph 12;
 and
 24 2. controlled her through "severe psychological coercion"
 paragraph 12.

25 Plaintiff's cause of action for intentional infliction of
 26 Emotional Distress places her mental, emotional and physical condition
 27 at issue as follows:

1 "...all of which had a mentally debilitating effect on the
 2 Plaintiff, leaving her confused, demoralized and unable to
 3 clearly think or reason." paragraph 36;

4 "...intended to undermine and eventually completely
 5 destroyed the plaintiff's self-respect, self-esteem and the
 6 concept of self and self-worth so the plaintiff could be
 7 controlled by the defendants." paragraph 37;

8 "The defendants conduct did, in fact, cause the plaintiff
 9 extreme mental and emotional distress and anguish, and
 10 physical harm resulting from the emotional distress."
 11 paragraph 40;

12 "...plaintiff has suffered emotional and psychological
 13 injury the extent of which will be proven at the time of
 14 trial." paragraph 41

15 **IV. PLAINTIFF'S EXPERT REPORT AND PSYCHOLOGICAL EVALUATION DETAILS**
 16 **HER SEVERE PSYCHOSIS AND OMITS MANY FACTS BROUGHT FORTH THROUGH**
 17 **INTERVIEWS AND TESTIMONY OF PLAINTIFF AND OTHERS**

18 Plaintiff's Expert Dr. Rose conducted a psychological evaluation
 19 of Plaintiff and prepared a report based on his findings *incorporated*
 20 *herein as Exhibit "B".*

21 Many of the events of Purser's life were withheld from Dr. Rose
 22 thus invalidating his findings as they relate to Defendant Boehm's
 23 alleged conduct. Missing are the myriad of individuals for whom Purser
 24 smoked "crack" cocaine with, obtained "crack" cocaine from, traded sex
 25 for money and drugs with as well as a detailed account of her
 26 involvement in several scams to defraud men of their money and
 27 property with co-conspirator Bambi Tyree.

28 Dr. Rose did note a number of findings which place in issue
 29 Plaintiff's psychological and physiological health:

30 1. Purser witnessed violence within her family, specifically her
 31 father beating her mother and choking her. *Dr. Rose report, page 1*

1 2. Purser was left at home alone at a young age. She drank beer
2 with her mother who eventually became addicted to cocaine. *Dr. Rose*
3 *Report, page 2*

4 3. Purser was physically assaulted by her mother who one time
5 almost "snapped her back". *Dr. Rose report, page 2*

6 4. Purser claimed that her adolescence was "fucked up because I
7 was smoking dope and before that smoking weed, addiction runs really
8 bad in my family." *Dr. Rose Report, page 2*

9 5. Purser's uncle sexually abused her, made her go topless, took
10 nude pictures of her and attempted to massage her on several
11 occasions.¹ *Dr. Rose Report, page 2*

12 6. Purser's mother "blackmailed her daily to get drugs". *Dr. Rose*
13 *Report, page 3*

14 7. Purser was psychiatrically hospitalized and reports a long
15 family history of bi-polar disorder. *Dr. Rose Report, page 4*

16 8. Purser has been prescribed zoloft, Prozac as well as
17 antipsychotic medication for which she believes is ineffective. *Dr.*
18 *Rose Report, page 4*

19 9. Purser admits to suicide ideation seven years ago and
20 attempted to cut her wrists with a pen. *Dr. Rose Report, page 4*

21 10. Purser admits to becoming addicted to cocaine after a three
22 month relationship with her boyfriend. When she took her first crack
23

24
25

¹ Purser denied any sexual misconduct by her uncle in her deposition and
26 went on to deny telling this to Dr. Rose raising yet another instance of
27 Purser's flawed credibility. Purser went on to testify that the allegations made
28 against her uncle were false because she felt he was "strict". Purser has now
taken three different positions with regard to her uncle's alleged behavior
lending further credence to the likelihood that her claims against Boehm are
false and for the purpose of obtaining undeserved monetary benefit.

1 hit she had an "outer space feeling" and felt like "I could not get
 2 enough".² *Dr. Rose Report, page 5*

3 11. Purser was expelled from school in 10th grade for selling
 4 XTC. She smoked heroin and snorted Oxy and Vicodin. *Dr. Rose Report,*
 5 *page 5*

6 12. Purser was abused by several boyfriends and drug dealers. *Dr.*
 7 *Rose Report, page 6*

8 13. Purser is currently on Federal probation for drug possession.
 9 *Dr. Rose Report, page 7*

10 Dr. Rose goes on to assess Purser's character traits, validity
 11 of complaints and personality type associated with her testing
 12 results. Dr. Rose's findings, if accurate, obviate a need for an
 13 evaluation by Boehm's expert.

14 **"...She is experiencing significant psychological problems,
 15 although she may be exaggerating her complaints..."** *Dr. Rose Report,*
 16 *page 8*

17 Dr. Rose goes on to report that individuals with Purser's
 18 clinical profile experience chronic psychological maladjustment. *Dr.*
 19 *Rose Report, page 8*

20 In describing the characteristics associated with Purser's
 21 clinical profile, Dr. Rose opines as follows on page 8 of his report:

22 1. They tend to manipulate others for their own gratification;

25 2 Purser has repeatedly alleged that Boehm got her addicted to "crack".
 26 Boehm has repeatedly denied this contention. Purser's statements to Dr. Rose
 27 indicate an immediate need for "crack" cocaine after her first experience. Purser
 28 also indicates an addiction as a result of a break up with her boyfriend.
 Finally, Purser testified to living with boyfriend Jay Whaley while she was 16
 years old. Purser went on to testify that he provided her "crack" cocaine and was
 a known drug dealer and escort service operator. Purser's addictions have nothing
 to do with Boehm

1 2. They rationalize their difficulties and blame others for their
 2 problems;

3 3. They behave in a somewhat aloof, cold and callous and
 4 uncompromising manner often attempting to advance themselves at the
 5 expense of others;

6 4. They are addiction prone to drugs and alcohol.

7 Finally, Dr. Rose concludes that Purser will need continued and
 8 extensive psychotherapy to address her psychological problems. Dr.
 9 Rose Report, page 11.

10 **V. BOEHM'S REQUEST FOR AN EVALUATION MEETS ALL OF THE REQUISITE**
ELEMENTS AS SET FORTH IN CASE LAW

12 A Party moving for physical or mental examination must meet
 13 two requirements: (1) physical or mental condition of party must be
 14 "in controversy" and (2) "good cause" for examination must be
 15 established. *Ragge v. MCA/Universal Studios, C.D.Cal.1995, 165 F.R.D.*
 16 *605. Federal Civil Procedure 1654*

17 **A. PLAINTIFF'S MENTAL AND PHYSICAL CONDITION**

18 In order for court to order examination of party by expert,
 19 party's physical or mental condition must be in controversy, expert
 20 must be either physician or psychologist, and good cause must be
 21 shown. *Stanislawski v. Upper River Services, Inc., D.Minn.1991, 134*
 22 *F.R.D. 260. Federal Civil Procedure 1651*

23 Boehm's expert Mark Mills is a board certified psychiatrist. His
 24 Curriculum Vitae is *incorporated herein as Exhibit "C"*

25 **B. GOOD CAUSE EXISTS**

26 Case law establishes good cause and is on all four corners with
 27 the facts and circumstances of the instant matter.

1 Defendants who were accused of sexual abuse of plaintiff while
2 she was a minor established good cause for two examinations of
3 plaintiff, one by a psychiatrist and one by a neuropsychologist;
4 plaintiff conceded that her mental condition was in controversy, both
5 requests were made at same time so there could be no credible
6 allegation of expert shopping, and both specialists were necessary in
7 light of complexity of mental injuries and their possible causes as
8 alleged by plaintiff. *Peters v. Nelson*, N.D.Iowa 1994, 153 F.R.D. 635.
9 *Federal Civil Procedure 1654*

10 "Good cause" existed for compelled independent medical
11 examination (IME), namely mental examination, in minor child's §§1983
12 action against District of Columbia, alleging that he had been
13 physically and sexually abused while in District's care and control,
14 resulting in physical, emotional and mental suffering; mental
15 examinations already performed constituted incomplete "snapshots" of
16 child's condition, new examination was to involve fresh round of tests
17 by new doctor regarding continuing injury, available medical records
18 and depositions were insufficient to ascertain current nature and
19 extent of injuries, and there was no showing of harm resulting from
20 IME. *Doe v. District of Columbia*, D.D.C.2005, 229 F.R.D. 24. *Federal*
21 *Civil Procedure 1654*

22 Purser's deposition testimony is inconsistent and contradicts
23 past statements including those made to her own expert! An evaluation
24 by Dr. Mills is necessary to determine the truth behind Purser's
25 claimed emotional and psychological damages as well as an accurate
26 assessment of the events leading up to and continuing her behavior.
27
28

1 **VI. DEFENDANT'S RIGHT TO A FAIR TRIAL**

2 Plaintiff's right to avoid invasion of mental examination must
 3 be balanced against defendant's right to fair trial. *Curtis v.*
 4 *Express, Inc., N.D.N.Y.1994, 868 F.Supp. 467. Federal Civil Procedure*
 5 1654

6 The rule governing mental examinations is to be construed
 7 liberally in favor of granting discovery. *Eckman v. University of*
 8 *Rhode Island, D.R.I.1995, 160 F.R.D. 431. Federal Civil Procedure 1651*

9 Boehm's discovery request is made to give him every opportunity
 10 to present fair and equitable argument at the time of trial. In
 11 balancing the hardships, Purser will not be prejudiced due to her
 12 extensive psychological claims. Boehm would be unfairly prejudiced if
 13 not allowed to meet the evidence presented by Purser.

15 **VII. DEFENDANT ATTEMPTED TO MEET AND CONFER**

16 Boehm's counsel has been more than courteous with Plaintiff's counsel
 17 even agreeing to an extension of time to Reply to Summary Judgment
 18 Opposition. Brett A. Greenfield attempted to meet and confer by way
 19 of November 10, 2006 Correspondence to Darryl Jones incorporated
 20 herein as Exhibit "D" :

21 **"In addition it will be necessary that your client submit
 22 to a psychological evaluation with our expert Dr. Mark
 23 Mills as she has put her psychological and physiological
 24 well being at issue. Please let me know if you are
 25 agreeable or if a motion to the Court compelling her
 attendance will be necessary."**

21 **"I anticipate that we can work together scheduling all
 22 future discovery. Should you have any questions or
 23 concerns, please do not hesitate to call me."**

27 Darryl Jones denied counsel's request

1 Boehm's counsel again attempted to meet and confer by way of
2 December 6, 2006 Correspondence to Darryl Jones *incorporated herein*
3 as *Exhibit "E"*:

"You recently denied our request to have your Ms. Purser submit to a psychological evaluation with our expert Mark J. Mills, J.D., M.D. by asserting that the Mr. Boehm missed the date to designate experts and witnesses as the reason for your denial. Our office timely designated experts pursuant to the Honorable Judge Singleton's recent Order extending pre-trial discovery dates by 45 days. Pursuant to Alaska Rule 35, Ms. Purser is obligated to submit to an evaluation. Good cause exists as your client has placed her psychological and physiological well being at issue".

"This is my last attempt to meet and confer with your office. Our expert Mark J. Mills, J.D., M.D. is available to travel to Anchorage on December 15, 16 or 17. Please let me know if your client will voluntarily submit to a psychological evaluation and if the aforementioned dates are acceptable no later than 5:00 p.m., December 7, 2006."

13
14 Dr. Mills did in fact travel to Alaska at a great expense to
15 Boehm two days after the conclusion of Purser's deposition. Dr. Mills
16 was able to complete additional business, however, was denied an
17 opportunity to evaluate Purser. Boehm's counsel has been diligent in
18 seeking discovery, traveling to Alaska on two occasions within the
19 last two months and arranging for the travel of his experts as well.³

VIII COMPLEXITY AND DISCOVERY LANDSCAPE

22 The location hurdles encountered by Boehm's counsel coupled with
23 the overwhelming and difficult task of locating witnesses, documents

3 It should also be noted that counsel for Purser, in an attempt to
26 gain a bad faith tactical advantage, filed his latest Motion for Summary
27 Judgment while Boehm's counsel was in Alaska conducting depositions. The filing
28 was made in order to shorten the available time to prepare and respond to a very
crucial motion encompassing the Christmas and New years holidays, a time for
family. Counsel knows no end to his gamesmanship.

1 and relevant information has only been made more difficult by the lack
2 of cooperation thus far by Purser's counsel.

3 In addition, predecessor counsel did very little by way of
4 discovery and motion practice leaving the Kenner Law Firm in a very
5 difficult and time sensitive position. Discovery thus far continues
6 to shed new light on the facts and circumstances surrounding the
7 claims against Boehm and continues to reveal individuals who
8 contradict each and every claim made by Purser. The magnitude and
9 complexity of this case is growing at an extreme pace necessitating
10 future request outlining specific discovery needs and scheduling.

11 **IX CONCLUSION**

12 For the foregoing reasons, Defendant Boehm respectfully requests
13 that this Honorable Court Order Purser to submit to a psychological
14 evaluation with Dr. Mills.

16 January 11, 2007

KENNER LAW FIRM, P.C.

19 By: _____ /S/
20 David E. Kenner,
21 Attorney for Defendant Josef F. Boehm

22 By: _____ /S/
23 Brett A. Greenfield,
24 Attorney for Defendant Josef F. Boehm

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28